

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JERRAL W. JONES,
Plaintiff,

vs.

**ALEXANDRA DAVIS and CYNTHIA
DAVIS f/k/a CYNTHIA DAVIS-SPENCER,**
Defendants.

CIVIL ACTION No. 5:23-cv-00032-RWS

JURY TRIAL DEMANDED

DEFENDANT ALEXANDRA DAVIS POSITION ON CONFLICT

Pursuant to the Court's Order at the conclusion of trial on July 22, 2024, Defendant Alexandra Davis ("Alexandra Davis") submits this position brief in response to the Court's question regarding whether Defendant Alexandra Davis had pled and listed in the Parties Joint Pre-Trial Order and in response would show the following:

**I.
Joint Pre-Trial Order**

Defendant Alexandra Davis listed the following in under "D Contentions of the Parties" in the very first contention listed set forth the argument:

1. Davis was never a party to the Settlement Agreement, nor was she bound by the Settlement Agreement. AT the time the Settlement Agreement was executed, Davis was a minor. No ad Litem, independent counsel, or court reviewed the Settlement Agreement or represented Davis at the time of the Settlement Agreement's execution

See Amended Joint Final Pre-Trial Order (Dkt. 216 p. 6).

**II.
Pleading**

Defendant Alexandra Davis' First Amended Answer and Affirmative Defenses to Jerral W. Jones' Amended Complaint list as the first affirmative defense the following:

1. Davis pleads that she was a minor at the time the Settlement Agreement was entered into by Jones and her mother. There was not an *ad litem* appointed to protect Davis' interest, nor was there any review by a court of the Settlement Agreement to ensure Davis' interest were protected. The Settlement Agreement is not enforceable against Davis who did not have the capacity at one-year of age to enter a contract.

See Defendant Alexandra Davis' First Amended Answer and Affirmative Defenses to Jerral W. Jones' Amended Complaint p. 5).

III. Motion for Summary Judgment

This issue was also raised and addressed in Defendant Alexandra Davis's Motion for Summary Judgment. Although the Court ruled against the granting of a summary judgment on this issue the Court held:

Further, Alexandra Davis has not demonstrated that her interests before reaching the age of majority were potentially adverse to Cynthia Davis's, which is the threshold for court appointment of a guardian ad litem. See Tex. Civ. P. 173.2(a).

See Order (Dkt. 196).

IV. Conclusion

Thus, Defendant Alexandra Davis has plead that the contract was not enforceable because of the lack of a guardian ad litem and court approval. Defendant Alexandra Davis did clearly list such position in the First Amended Pre-Trial Order. Defendant Alexandra Davis has plead this defense from the beginning and still maintains such defense in all its pleadings. This issue is not by any means a surprise and has been very much a part of this case from the beginning. The Court's denial of the summary judgment on this issue for failure to prove for summary judgment an issue does not mean that Defendant cannot prove a conflict of interests at trial in support of its plead defense position that is set forth as one

of her contentions in the First Amended Pre-trial Order.

Respectfully submitted,

/s/ Matt Keil

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LEAD COUNSEL

CERTIFICATE OF SERVICE

On July 22, 2024, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court, which will send notice of electronic filing to all counsel of record.

/s/ Jay K. Gray

Jay K. Gray